



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0107; FRL-9426-03-R9]

Determination To Defer Sanctions; Arizona; Maricopa County; Power Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted a revised rule on behalf of the Maricopa County Air Quality Department (MCAQD or County) that corrects deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning ozone nonattainment requirements for controlling oxides of nitrogen (NO_x) at power plants. This determination is based on a proposed approval, published elsewhere in this ***Federal Register***, of MCAQD's Rule 322 regulating that source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous disapproval by the EPA in 2020 is now deferred. If the EPA finalizes its approval of MCAQD's submission, relief from these sanctions will become permanent.

DATES: This determination is effective on [Insert date of publication in the ***Federal Register***]. However, comments will be accepted on or before [Insert date 30 days after date of publication in the ***Federal Register***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0107 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

On July 20, 2020 (85 FR 43692), the EPA issued a final disapproval for MCAQD’s Rule 322 that had been submitted by the ADEQ to the EPA for inclusion into the Arizona SIP. The 2020 action addressed the requirement that the MCAQD implement reasonably available control technology (RACT) for emissions sources in ozone nonattainment areas under the Act. In that action, we determined that the Rule 322 submittal included several deficiencies that precluded our approval of the rule into the SIP, and thus failed to implement RACT. Therefore, our 2020

action included a disapproval of the SIP revision under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this disapproval action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of August 19, 2020, and highway sanctions 6 months later.

On June 23, 2021, the MCAQD revised Rule 322 and on June 24, 2021, ADEQ submitted the SIP revision to the EPA for approval into the Arizona SIP. The revision is intended to address the disapproval issues under title I, part D that we identified in our 2020 action. In the Proposed Rules section of this ***Federal Register***, we have proposed approval of the revised MCAQD Rule 322. Based on this proposed approval action, we are also taking this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2020 action's disapproval, because we believe that the 2020 submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of MCAQD Rule 322 with respect to the title I, part D deficiencies identified in our 2020 action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2020 action would be permanently terminated on the effective date of our final approval of MCAQD Rule 322.

II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our disapproval action on July 20, 2020, of MCAQD Rule 322 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve Rule 322, which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MCAQD's submittal of Rule 322 addresses the deficiencies under part D of title I of the CAA identified in our 2020 action and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Is subject to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that

notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days after date of publication in the *Federal Register***]. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: **February 1, 2022.**

Martha Guzman Aceves,
Regional Administrator,
Region IX.